A. Joyce, Nancy, Skip or Jim.

Q. Supply us some last names if you can.

A. I'm not sure of Joyce's last name. Nancy Woolum, Jim Steger and Skip Lawhorn.

Q. Lawhorn?

A. Yeah.

Q. So those four individuals. Were there full-time jobs investigators of death scenes? Did they have other duties in addition?

A. They had other duties, the extent of which I am not sure of.

Q. So in any event, the first time you went you went with one of those four to the death scene. And did those people then help you in terms of giving you some ideas of what you should be doing?

A. Yes.

Q. Had you received any training or instruction from any of the pathologists in the coroner's office as to what you do at a death scene prior to going out the first time you went in July?

A. They explain what the reasons for going to the death scene were, as the same reasons that I have just explained to you.

Q. Did they tell you like, for example, when you go you should always take photographs, and here's how you should take them? For instance, a general view, close-up views, whether you should move the body.

I know that's a compound question, but with that in mind, I'll ask you a simpler question, but that's what I want to know about. Did they instruct you in terms of those things what you do as far as taking photographs, for example?

MR. GERHARDSTEIN: You're not doing a road map, right?

MR. GILLIGAN: I do a lot of my questions like that so the witness knows what I'm asking. I think if you read my depositions, no matter who I take, I do that.

A. In terms of photographs, I remember the phrase, I was told to take lots of photographs. The one reason was because I, at that point I wasn't sure what was important or what was not. And once you leave the scene, the record is the photographs. And if the person processing the scene does not have enough experience, they could miss things, which could be found later in the photographs.

And so along those lines, I was told yes, hearing room.)

Q. How long were you a fellow before you got to that point, would you say?

A. A couple months.

Q. By, say, the end of August?

A. Yeah.

Q. September?

A. (Nodding.)

Q. Verbalize the answer yes.

A. Yes.

Q. Thank you. I also want to talk about autopsies. When you would be assisting another pathologist in an autopsy, can you describe for us how you would assist him?

A. You mean when I would assist one of the attendings?

Q. Yes.

A. Well, that only happened right at the beginning of my fellowship where they were teaching me the technique of autopsy, the physical dissection. And so it was more like a hands-on; here, this is how you do it. Here, you do it. And I would do it, and say what I'm doing right and wrong and correct me in my technique.

present in the room besides Mr. Condon who took the photo?

MR. GERHARDSTEIN: You're still on August 16th?

MR. GILLIGAN: His having seen the photos that were taken at that time of Brady.

A. I don't remember being able to tell if anyone was in the room. I don't think so.

Q. Did you ever ask Condon either at this time in September, the second time you met, or at any time thereafter whether there was anyone present in the room when he took photos of the body of John Brady that utilized props?

A. Yes.

Q. When?

A. When did I ask him?

Q. Yes.

A. I really don't remember if it was that second time I talked with him or after the indictment. I really don't remember.

Q. And what did he say?

A. He said no, no one else was in the room.

MR. PATSFALL: I can't hear you.

Q. Speak up.

AFTERNOON SESSION

12:55 PM

- - -

JONATHAN TOBIAS, M.D.

being by me previously duly cautioned and sworn, deposes and says further as follows:

CROSS-EXAMINATION (Continued)

BY MR. GILLIGAN:

Q. The next thing on your affidavit, next paragraph from where I left off at the time of the lunch break, it's paragraph seven. And the first sentence there says, "On the evening of November 9th, 2000, I took one photo of the body of Perry Melton while it was housed in the Hamilton County Morgue."

From the standpoint of dates, paragraph six left off on September 15th, 2000. And the next time frame in your affidavit is November the 9th.

A. Uh-huh.

Q. What I would like to know is what was your relationship with Thomas Condon from the period of September 15th until November the 9th, 2000?

In other words, did you continue your friendship, see one another, et cetera?

A. Yeah, we were friends.
Q. Between the period of the end of the day of August 16th, 2000 and September the 15th, 2000 did you ever see Thomas Condon at the Hamilton County Coroner's office or the morgue?
A. No.
Q. Between the period of September 15th, 2000 and through November 9th, 2000 did you ever see Thomas Condon at the morgue?
A. No.
Q. During the period between September 15th, 2000 and November 9th, 2000 how many times were you in the presence of Thomas Condon, would you estimate?
A. Six or seven times.
Q. In addition to the two that you already testified about?
A. Yeah.
Q. Where and when did these get-togethers occur?
A. I can't give you exact dates. I met him usually at his studio. I think we met on one occasion in a bar on Main Street. That might have been two occasions.

A. No, he did not.

Q. So Daly never said anything to you that indicated that he had any knowledge that the project that Condon wanted to do would entail taking photos of dead bodies in the Hamilton County Morgue with props?

A. No.

Q. Or manipulated in some way?

A. No, he didn't say that.

Q. Let me go to paragraph seven. And I read earlier the first sentence. And the second sentence now says, "Earlier that day, I had learned that Mr. Melton had been killed as a result of an industrial accident and that his body was very badly traumatized. I believed that I was going to be the pathologist performing the autopsy the next day on Perry Melton, and, for that reason, I wanted to view the body before I left that evening." Is that all accurate?

A. Yes.

Q. How did you become aware of the information that I just read, i.e., that the accident had happened and the body was badly traumatized?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JACQUELINE CHESHER,	)	**Case No. C-1-01-566**
	:	**(Consolidated With**
Plaintiff,	)	**Case No. C-1-01-772)**
	:	
-v-	)	**Judge Spiegel**
	:	**Magistrate Judge Hogan**
TOM NEYER JR., et al.,	)	
	:	
Defendants.	)	
	:	**AFFIDAVIT OF JONATHAN TOBIAS**
	)	
	:	
	)	

STATE OF OHIO)
SS:
COUNTY OF HAMILTON)

I, JONATHAN TOBIAS, being first duly cautioned and sworn, state as follows:

1. I had five and one half years undergraduate work, four years medical school, and was in the process of completing my residency when I accepted a fellowship at the Hamilton County Coroner's Office.

2. During the period of July 1, 2000 through January 15, 2001, I was a fellow at the Hamilton County Coroner's Office. At that time, my duties were to learn forensic pathology and to perform the duties of a deputy coroner under the supervision of Hamilton County Coroner's Office pathologists.

3. On August 16, 2000, I was introduced to Thomas Condon ("Condon") for the first time. This introduction was made by Chief Deputy Coroner, Robert Pfalzgraf ("Pfalzgraf"), who at that time was working with Thomas Condon on an autopsy video for use by Dr. Parrott and

EXHIBIT 2

PLAINTIFF'S EXHIBIT
TOBIAS
5-29-03

the Hamilton County Coroner's Office. Condon was viewing, videotaping, and photographing the autopsy of John P. Brady, which was being performed by Pfalzgraf.

4. Although I saw Condon taking photographs of the body of John P. Brady on August 16, 2000, I did not see him take any photographs of Brady other than those of the routine autopsy being performed by Pfalzgraf. I also saw Condon take photographs of the body of Eugene White, which is the body upon which I performed an autopsy on a table adjacent to the one upon which Pfalzgraf was working. At no time did I see Condon take propped photos, nor did I authorize any such photos.

5. Prior to leaving on August 16, 2000, Condon gave me one of his business cards. After returning to my office on the second floor of the Coroner's Office, I reviewed his business card and recognized Condon's name as being connected with my ex-wife. I returned to the first floor of the Coroner's office to see if Condon still was present and, if so, to ask him whether he remembered my ex-wife. Condon confirmed that he once knew my wife and we began a casual conversation.

6. After meeting on August 16, 2000, Condon and I became friends. Between August 16, 2000, and September 15, 2000, I met with Condon on approximately two occasions at his studio. I was interested in photography as a way to develop my expertise as a doctor specializing in forensic pathology, which includes the photography of bodies and death/crime scenes. Photographing dead bodies for forensic pathology purposes has long been recognized as a significant teaching tool.

7. On the evening of November 9, 2000, I took one photo of the body of Perry Melton while it was housed in the Hamilton County Morgue. Earlier that day, I had learned that

Mr. Melton had been killed as a result of an industrial accident and that his body was very badly traumatized. I believed that I was going to be the pathologist performing the autopsy the next day on Perry Melton, and, for that reason, I wanted to view the body before I left that evening. I also was interested in having for my files a photograph of Mr. Melton's unique injuries. I took only one photograph of Mr. Melton because I had only one exposure remaining in the roll of film. Condon was not with me when I took the picture of Mr. Melton. To my knowledge, Condon was not present in the morgue on November 9, 2000.

8. The next day, November 10, 2000, when I arrived at the Coroner's Office to report for duty, I learned that Dr. Pfalzgraf already had conducted the autopsy of Perry Melton. As such, I was not involved in taking any further photographs of Mr. Melton's body. I do believe that Dr. Pfalzgraf may have taken certain photographs of the body in connection with his performance of the autopsy. I further believe that photographs were taken of Mr. Melton's body by Nancy Woolum on November 9, 2000, at the scene of Mr. Melton's industrial accident. Such photographs are taken in the ordinary course of the business of the Coroner's Office. To the best of my knowledge, Condon never came in contact with or viewed the body of Perry Melton while it was in the morgue. To my knowledge, Condon never was even there on the days on which Mr. Melton's body was held at the morgue.

9. On December 6, 2000, Condon was present at the morgue for the purpose of assisting the Coroner's Office staff with our efforts to take better photographs with the digital camera technology then used by the Coroner's Office. With this in mind, and in the presence of Condon, I took a few photographs of a body to demonstrate to Condon the poor picture quality of the digital cameras used by the morgue. I left Condon in the autopsy suite for approximately 20 minutes while I went upstairs to print off the digital pictures on Terry Daly's computer. I then

returned to the autopsy suite where Condon was waiting for me. I did not see Condon take any propped photos on December 6, 2000, nor did I authorize any such photos.

10. Approximately one week later, Condon, Dr. Gary Utz, and another professional photographer, and I had a lunchtime meeting in Dr. Utz's office and the autopsy suite. No bodies were present in the autopsy suite and Condon was not left alone. To my knowledge no photos of any bodies were taken during that visit.

11. On December 24, 2000, Condon took photographs of the autopsy of Jonathan Frith which was being performed by Dr. Utz. I did not see Condon take any propped photos, nor did I authorize any. On the same date, I performed the autopsy of Adam Richardson. Mr. Richardson's body had been received by the morgue because he was accidentally shot in the forehead. Because of the gunshot wound to the forehead, it was necessary for me to take water and soap and clean the face of Mr. Richardson. During that process, I noticed that the entrance wound had some unique qualities in that it actually looked more like an exit wound. Because I had not previously encountered such a wound, I decided to go upstairs to discuss the matter with Dr. Utz. Before leaving the autopsy suite to meet with Dr. Utz, I noticed that Condon had an apple with him which, at the time, I believed he intended to eat. Since the autopsy suite is no place to be consuming food, I told Condon to throw the apple in the trash. I did not see Condon take any propped photos of the bodies of Adam Richardson or Debbie Beckman, nor did I authorize any such photos.

12. On January 7, 2001, Condon was present at the morgue. During the time that Condon was in the office on January 7, 2001 he started to witness the autopsy that I was performing of a burn victim. Burn victims' bodies create an odor, and Condon advised that he

was stepping outside because he could not stand the smell. Apparently, as I concentrated on the business of performing the autopsy, Condon went into the cooler. At no time did I see Condon take any propped photos of the bodies of Christina Folchi or Barbara Sowards, nor did I authorize any such photos.

13. As part of my duties as a forensic pathology fellow at the morgue, it was required that I go to death scenes. In conjunction with these duties, I photographed bodies at the death scenes. Between September 1, 2000, and January 1, 2001, I attended and photographed the death scenes of Ulysses Greene, Toby Malakoff, Jeffrey Bowles and Eddie Gibson. None of these deaths were considered a homicide and, therefore, it was not immediately necessary to have the death scene photographs included as part of the file for these individuals. I developed the film that I had shot into negatives. I took the negatives to Condon's studio in order to develop these negatives into prints myself. I had been permitted by Condon to use his lab in order to make prints. I had used his studio to develop the one photograph I took of the body of Perry Melton, which I described above. I had not given any undeveloped negatives to Condon to keep; I simply left them there until I found the time to use Condon's equipment to make prints. None of the photographs of dead bodies I took involved anything other than forensic pathology activities; the photographs were entirely appropriate based upon the forensic pathology standards that I learned at the Hamilton County Coroner's Office. I never took to Condon's studio any of my negatives from death scenes other than the individuals listed above.

14. In summary, based upon my own personal knowledge of the photographs that the police found in Condon's possession that contained props, those propped photographs were not taken with my knowledge, nor did I authorize, aid or abet Condon in taking those photographs at any time. I was present on five occasions when Condon was at the Hamilton County morgue

between August, 2000, through January, 2001. As previously stated, these occasions were August 16, December 6, one date in mid-December, December 24, 2000, and January 7, 2001. Any propped photographs taken of the bodies of John Brady, Thomas Senteney, Adam Richardson, Debbie Beckman, Barbara Sowards and Christina Fulchi during those times were not authorized by me. I did not observe Condon at the Hamilton County Coroner's Office at any other time.

FURTHER AFFIANT SAYETH NAUGHT.

Jonathan Tobias

Sworn to and subscribed before me this 21 day of May, 2003.

Notary Public